

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**BERNADETTE CAPPA,**

**Plaintiff,**

**v.**

**5:09-CV-583  
(FJS/VEB)**

**MICHAEL ASTRUE,  
Commissioner of Social Security,**

**Defendant.**

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**APPEARANCES**

**OF COUNSEL**

**OLINSKY & SHURTLIFF**  
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Attorneys for Plaintiff

**HOWARD OLINSKY, ESQ.**

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Attorneys for Defendant

**MICHELLE L. CHRIST, ESQ.  
SUZANNE M. HAYNES, ESQ.**

**SCULLIN, Senior Judge**

**ORDER**

Plaintiff filed this action on May 19, 2009, seeking judicial review of the Commissioner's final decision pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3). *See* Dkt. No. 1. Defendant filed his answer on December 14, 2009. *See* Dkt. No. 9. Plaintiff filed a supporting brief on February 18, 2010, *see* Dkt. No. 12; and Defendant filed a brief in opposition on May 14, 2010, *see* Dkt. No. 17. Pursuant to General Order No. 18, Magistrate Judge Bianchini proceeded "as if both parties had accompanied their briefs with a motion for judgment on the pleadings." *See* General Order

No. 18. On June 29, 2011, Magistrate Judge Bianchini issued a Report and Recommendation, in which he recommended that the Court grant Plaintiff's motion, deny Defendant's motion, reverse the Commissioner's decision and remand this matter to the Commissioner for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). *See* Dkt. No. 19 at 24. Neither party filed any objections to these recommendations.

When a party does not object to a magistrate judge's report-recommendation, the court reviews that report-recommendation for clear error or manifest injustice. *See Linares v. Mahunik*, No. 9:05-CV-625, 2009 WL 3165660, \*10 (N.D.N.Y. July 16, 2009) (citation and footnote omitted). After conducting this review, "the Court may 'accept, reject, or modify, in whole or in part, the . . . recommendations made by the magistrate judge.'" *Id.* (quoting 28 U.S.C. § 636(b)(1)(C)).

The Court has reviewed Magistrate Judge Bianchini's June 29, 2011 Report and Recommendation for clear error and manifest injustice; and, finding none, the Court hereby

**ORDERS** that Magistrate Judge Bianchini's June 29, 2011 Report and Recommendation is **ACCEPTED in its entirety** for the reasons stated therein; and the Court further

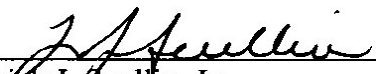
**ORDERS** that Plaintiff's motion is **GRANTED**; and the Court further

**ORDERS** that Defendant's motion is **DENIED**, the Commissioner's decision is

**REVERSED**; and this case is remanded to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings consistent with Magistrate Judge Bianchini's Report and Recommendation.

**IT IS SO ORDERED.**

Dated: July 28, 2011  
Syracuse, New York

  
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Frederick J. Scullin, Jr.  
Senior United States District Court Judge